IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of the case.

W.P. No. 194 (S/S) of 2000

Date of decision :- 25-9-2006

~~**Approved for reporting**~~

Not approved for reporting

Date :- 25-9-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 194 (S/S) of 2000

Khilap Singh Bhandari
S/o Shri Narendra Singh Bhandari
R/o village Sarpani
P.O. Ustoli (Ghat)
Tehsil & District Chamoli

…….Petitioner

Versus

1. State of U.P. through Secretary Revenue
   Anubhog 9 Lucknow U.P.
2. Commissioner & Secretary Board of Revenue, U.P.
   Anubhog 3 Tahsildar & Naidb Tahsildar Lucknow
3. Additional Commissioner
   Vitya Rajashav Parishad
   Srinagar Garhwal Mandal, Pauri Garhwal
4. Collector Chamoli ……Respondents

Dated:- 25th September, 2006

Mr. Rajendra Dobhal Advocate for the petitioner.
Mrs. Beena Pandey Standing Counsel for respondent Nos. 1&2
Mr. N.P. Shah Standing Counsel for respondent no. 3 & 4.

Hon'ble J.C.S. Rawat, J.

1. Both the parties are ready to dispose it of at the time of admission.

2. By means of this writ petition under section 226 of the Constitution of India, the petitioner has sought the following reliefs:-

(i) issue a writ of certiorari quashing the order dated 20.10.1999 and 23.10.2000 (Annexure No. 2 & 5 to the writ petition) passed by the respondent No.4 & 2 respectively.

(ii) Issue any other writ of mandamus commanding the respondents to pay the post retirement benefit i.e. GPF & Salary for the period 1.6.1997 to 1.7.1996 and pension to

the petitioner alongwith 100% interest per annum.

(iii) Any order, direction, writ which the Hon'ble Court deems just and proper in the present case.

(iv) Award the costs of the petition to the petitioner.

3. The petitioner's case is that he was retired from the post of Tehsildar, Yatra Badrinath on 28.02.1998 after attaining the age of superannuation. After the retirement the petitioner had been paid interim pension @Rs. 3,709/- per month w.e.f. 1.3.1998 to 28.02.1999 and for that period a sum of Rs.44,508/- was paid us interim pension. In addition to above, the petitioner was also paid a sum of Rs.1,29,000/- as interim gratuity and a sum of Rs.1,32,000 was for gratuity vide order dated 05.03.1999 (Annexure-1 to the petition). It was further alleged in the petition that the respondent had not paid the amount of GPF i.e. Rs. 82,000/- and one month salary of the petitioner i.e. 1.6.1996 to 1.7.1996. On 20.10.1999 the respondent no. 4 passed an order directing petitioner to deposit Rs. 19,154 as the said amount has been wrongly paid to the petitioner due to wrong fixation of salary. The petitioner was further directed to deposit Rs. 8000/- which is outstanding against him with regard to Bhukamp relief. Feeling aggrieved by this, the petitioner filed his reply denying the responsibility of Rs. 8000/- and categorically stated that the final payment was made by the officer concerned and it was the duty of the officer who had made the payment of final installment to adjust the amount of Rs.2000/- which was paid by the petitioner and as such the petitioner cannot be made responsible

for the adjustment of 8000/-. On 18.07.2000 the respondent no. 4 has written a letter to the respondent no. 1 with the request to sanction the salary of the petitioner for the period w.e.f. 1.6.1996 to 1.7.1996 in which the petitioner was awaiting to his posting at Pauri in the office of Commissioner Garhwal Mandal. Thereafter, the respondent no. 4 directed the petitioner to deposit a sum of Rs. 19,154/- as the said amount has been wrongly paid due to wrong fixation of the salary. The petitioner was also directed to deposit Rs.8000/- which was outstanding against the petitioner with regard the Earthquake outstanding. Reply was submitted by the petitioner stating therein that the petitioner had no responsibility to deposit the amount of Rs. 8000/- as it was not his responsibility to pay the said amount and it was the mistake of the respondents for which he is not responsible in any manner. When no heed was paid to the request of the petitioner, the present writ petition has been filed before this Court.

4. In pursuance of the present petition, a short counter affidavit has been filed on behalf of the State of U.P.

5. Head learned counsel for the parties and perused the record.

6. Mrs. Beena Pandey learned counsel for the respondent no.1 & 2 has stated that the matter of post retrial benefit is under process and it is at the final stage. As soon as the proposal will be finalized the amount would be released to the petitioner.

7. At the outset, the petitioner has retired prior to the creation of the State of Uttaranchal and as such the liability to pay the pension and post retrial benefits lies upon the State of U.P. under the U.P. Reorganization Act. The outstanding pay also pertains to the period when the petitioner was serving in the erstwhile State of U.P. It is not disputed that the petitioner is entitled to get the post retrial benefits i.e. GPF, one month salary and pension. The respondents had only taken a case that the matter is under process and they would pay the amount as soon as the matter would be finalized. As such, the liability of the State of U.P. is established by the pleading of the parties.

8. It was contended on behalf of the petitioner that the respondents had no right to re-fix the salary of the petitioner w.e.f. 6.9.1997 when he has been retired. The benefits which had already been received to him cannot be taken away and he cannot be deprived of already availed benefits. Learned Standing counsel for the State of U.P. has refuted the contention and contended that the respondents cannot recover from the petitioner after his retirement any part of the salary already paid to him.

9. Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **Bindeshwari Sahai Srivastava Vs. The Chief Engineer, Irrigation Department, U.P. 1996 (4) U.P. Local Bodies Educational cases p/2634** in which it has been held as under:-

> *"3.If the salary of an employee has been fixed and paid by his employer voluntarily without there being any fraud or misrepresentation by the employee, it is not*

open to the employer to recover any amount of the salary already paid to the employee, even if, later on, it is found that the employee was not entitled to the salary at that rate/scale of pay unless the order fixing the salary/pay-scale is corrected by the employer shortly after it was passed. Reference in this connection may be made to the decision of Supreme Court in ***Sahib Ram Vs. The State of Haryana & others J.T. 1995 (1) SC 24,*** *wherein it was laid as under:-*

> *"Admittedly the appellant does not passes the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any mis-represenation made by the appellant that the benefit of higher payscale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The Principal of equal pay for equal work would not apply to the scale prescribed by the University Grants Commission . The appeal is allowed partly without any order as to costs."*

"4. In the above case, the concerned employee (Librarian) was given the revised pay-scale of Rs. 700-1600/-. Subsequently, it was discovered that he employee was not entitled to that scale, and therefore, the order was passed for recovering the excess amount paid to him. This order was set – aside by the Supreme Court."

10. In the case in hand, the petitioner has alleged in the grounds of petition that he had not played any fraud or misrepresentation. If there was any mistake in fixing the pay, it was mistake of the respondents for the which he is not responsible in any manner. These allegations have not been disputed in the short counter affidavit

filed on behalf of the State of U.P. Thus, it is revealed that the salary of the petitioner was fixed by the State of U.P. voluntarily without there being any fraud or misrepresentation on the part of the petitioner. The respondents cannot recover from the petitioner after his retirement any part of the salary already paid to him. Therefore, it would be just and proper to direct the respondents to release the entire amount of post retrial benefits and one month salary alleged in the petition.

11. In view of the foregoing discussion, the writ petition is allowed. The orders dated 20.10.1999 and 23.10.2000 (Annexure -2 & 5 to the writ petition) are quashed. The respondents are directed to pay GPF amount to the petitioner and the salary of one month for the period of July 1996. The respondents will continue to pay the pension regularly to the petitioner. The respondents shall pay the amount of outstanding G.P.F. and one-month's salary of the petitioner within a period of four months from the date of receipt of copy of this order. The petitioner shall also get interest @ 12% per annum on the outstanding pension, one month salary and outstanding G.P.F. from the date when the same had become due.

(J.C.S. Rawat, J.)

Dated 25.09.2006
LSR